

an effort to utilize the Commission's processes for the purposes of delay and harassment in order to advance Rainbow's private (as opposed to any valid public) interest. Press should not be forced to suffer from such abuse of the Commission's processes, and the Commission should not tolerate such abuse. Certainly Rainbow's demonstrated willingness to engage in such deplorable misuse of the Commission's resources weighs heavily against the granting to Rainbow of any authorization now or in the future.

**E. Rainbow's Misrepresentation and Lack of Candor**

27. Finally, an overview of all of the foregoing reveals that Rainbow has engaged in repeated instances of misrepresentation and/or lack of candor in order to accomplish its nefarious purposes. For example, Rainbow has filed repeated pleadings in opposition to Press' upgrade without once advising the Commission that Rainbow's true purpose in so doing was the mere avoidance of threatened competition from Press. Similarly, lacking any valid substantive basis on which to challenge the Commission's proper grant of Press' modification application, Rainbow alleged in its petition for reconsideration that Press did not have reasonable assurance of the availability of its site. See Rainbow's Petition for Reconsideration and Stay at 1. But that allegation was directly contradicted by statements which Rainbow itself had made to the court in Florida. <sup>14/</sup> And, most

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<sup>14/</sup> According to Rainbow's Complaint, "[i]t is anticipated that [the tower owner] will immediately execute a lease with Press to allow the construction of its antenna within the top slot and its  
(continued...)

recently, Rainbow has sought an extension of its construction permit based on an obviously misleading assertion, i.e., that a "dispute" between Rainbow and its tower owner has somehow prevented Rainbow from constructing. As shown above, any such assertion is absolutely false.

28. Additionally, there are the matters of Rainbow's financial qualifications and its mysterious \$4,000,000 benefactor, matters as to which Rainbow has been totally silent before the Commission. These are matters which strike at the heart of Rainbow's basic and comparative qualifications. Rainbow's total failure voluntarily to advise the Commission of such matters reflects a non-candid, misrepresentative bent just as surely as do the overt falsehoods of which Rainbow is equally guilty. The consistent impression of Rainbow created by all of these circumstances is one of an entity on which the Commission simply cannot rely for truthfulness or candor. Exhaustive inquiry into this question would have to be undertaken before any further permit could be granted to Rainbow. <sup>15/</sup>

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<sup>14/</sup>(...continued)  
aperture." Rainbow Complaint at 8. This, of course, is an unequivocal concession that Press does have reasonable assurance of the availability of its site -- contrary to the claim advanced by Rainbow in its Petition for Reconsideration.

<sup>15/</sup> It should be noted that the Commission was forewarned about Rainbow's tendency to be less than forthright and candid. The Presiding Administrative Law Judge disqualified Rainbow for misrepresentation. See Metro Broadcasting, Inc., 57 R.R.2d 440, 443 (Rev. Bd. 1984). While that ruling was reversed by the Review Board, id., the Board was hardly unanimous in that decision. Concurring "dubitante", Board Member Blumenthal specifically noted that Rainbow, a "peripatetic applicant", had only "narrowly eluded" a "fatal lack of candor finding". 57 R.R.2d at 454.

### III. Conclusion

29. For more than five years Rainbow has been a Commission permittee whose primary obligation has been to construct and operate a television station. Rainbow has failed to meet that obligation. Indeed, it has not even attempted to meet that obligation. Instead, while studiously avoiding any activity which might have led to the prompt initiation of service to the public, Rainbow has spent considerable time and energy trying to interfere with Press' legitimate, diligent efforts to improve the service provided to the public by not one, but two stations. Rainbow has thus disserved the public by depriving it of three separate opportunities for new or improved service. In so doing, Rainbow has been guilty of misrepresentation (or, at the very least, serious and obvious lack of candor), abuse of process and anti-competitive activity.

30. Now Rainbow is asking for more time in which to construct its station. But if past is prologue, all Rainbow is really seeking is additional time in which to interfere with Press' legitimate (and Commission-authorized) efforts to assure better, more diverse programming service to the public. Rainbow has not made, and cannot make, the well-established threshold showing required of applicants for construction permit extensions. But more importantly, even if some such showing had been made (or even attempted), so many serious questions exist concerning Rainbow's basic and comparative qualifications that the Commission could not, in any event, properly grant Rainbow's

application without first considering and resolving those multiple questions. <sup>16/</sup> Accordingly, Rainbow's application should be denied or, at a minimum, designated for hearing, in order to assure that Rainbow, an obviously unqualified applicant, is not permitted to further waste the valuable public resource which is Channel 65 in Orlando.

Respectfully submitted,

  
/s/ Harry F. Cole  
Harry F. Cole

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(202) 833-4190

Counsel for Press Television Corporation

February 15, 1991

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<sup>16/</sup> Such inquiry would most likely require a full hearing. At a minimum, as a preliminary matter, the Commission should require Rainbow to provide full and forthright disclosures concerning Rainbow's financial qualifications and Rainbow's arrangements or understandings with any person(s) or entities committed to providing substantial funding to Rainbow. While Rainbow would normally be expected to have provided such disclosures voluntarily, and may even be expected to provide them in response to this objection, Rainbow's track record with respect to truth and candor is not especially good. Accordingly, Press specifically requests that, absent any reasonably detailed disclosures from Rainbow in its response to this complaint, the Commission compel Rainbow to provide all relevant information concerning these matters.

ATTACHMENT A

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT, IN AND  
FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.

JOSEPH REY, LETICIA JARAMILLO,  
and ESPERANZA REY-MEHR, as General  
Partners of RAINBOW BROADCASTING  
COMPANY, a Florida Partnership,

90-54033

Plaintiffs,

vs.

GUY GANNETT PUBLISHING CO., Individually,  
GUY GANNETT PUBLISHING CO., doing business  
as GANNETT TOWER CO., GUY GANNETT PUBLISHING  
CO., doing business as BITHLO TOWER COMPANY,  
GANNETT TOWER COMPANY, Individually, MPE  
TOWER, INC., Individually and GANNETT TOWER  
COMPANY and MPE TOWER, INC. as General Partner  
and copartners doing business as  
BITHLO TOWER COMPANY, a Florida General partnership.

Defendants.

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**VERIFIED COMPLAINT  
FOR SPECIFIC PERFORMANCE AND OTHER RELIEF  
FBN: 026955**

Plaintiffs, JOSEPH REY, LETICIA JARAMILLO and ESPERANZA REY-MEHR, as General Partners of RAINBOW BROADCASTING COMPANY, a Florida Partnership, sue Defendants, GUY GANNETT PUBLISHING CO., Individually, GUY GANNETT PUBLISHING CO., doing business as GANNETT TOWER CO., GUY GANNETT PUBLISHING CO., doing business as BITHLO TOWER COMPANY, GANNETT TOWER COMPANY, Individually, MPE TOWER, INC., Individually and GANNETT TOWER COMPANY and MPE TOWER, INC. as General Partners and as copartners doing business as BITHLO TOWER COMPANY, a Florida General partnership and alleges:

EXHIBIT 1

1. This is an action for specific performance, temporary and permanent injunction and other relief.

2. At all times material to this action, Defendant, GUY GANNETT PUBLISHING CO. ("GUY GANNETT"), was and is a corporation organized under the laws of the State of Maine doing business in the state of Florida under its own name and as GANNETT TOWER CO. with offices in Miami, Dade County, Florida and having a business agent who resided or transacted business in Miami, Dade County, Florida. On or about September 1989, GUY GANNETT acquired all rights title and interest in the BITHLO TOWER COMPANY and continued to do business in the State of Florida as BITHLO TOWER COMPANY.

3. At all times material, GANNETT TOWER CO. (GANNETT TOWER) was a corporation organized under the State of Maine doing business in the state of Florida with offices in Miami, Dade County, Florida, a registered agent in Miami, Florida, and a business agent who resided or transacted business in Miami, Dade County, Florida. At all times material, GANNETT TOWER CO., was a General Partner and copartner in BITHLO TOWER CO., a Florida general partnership.

4. At all times material, MPE TOWER, INC., was a corporation organized under the State of Florida and a General Partner and copartner of BITHLO TOWER COMPANY ("BITHLO"), a Florida General Partnership, with its registered agent in Broward County, Florida.

5. At all times material to this action, the Plaintiffs, JOSEPH REY, LETICIA JARAMILLO and ESPERANZA REY-MEHR, were General Partners of RAINBOW BROADCASTING COMPANY, a Florida General Partnership ("RAINBOW").

6. At all times material to this action, BITHLO (hereinafter also referred to as "Landlord"), owned a communications transmission tower ("Tower") located in Bithlo, Florida, near Orlando, Florida.

7. At all times material to this action, Plaintiff, RAINBOW (hereinafter also referred to as "Tenant"), was the permittee of television station Channel 65, Orlando, Florida (the "Station"), and desired to place and operate the antenna for the "Station" at a suitable location. The Tenant had been granted a Construction Permit ("Permit") issued by the Federal Communications Commission ("FCC"), and, based upon BITHLO's representations and the execution of a Lease Agreement with the Defendants as set forth herein, filed a site change application and received FCC approval to relocate its antenna to the "Tower" and install its transmitter in the transmitter building on the Landlord's premises.

8. On or about January 6, 1986, the Plaintiff ("Tenant") entered into a Lease Agreement ("Lease") with BITHLO through its General Partners, GANNETT TOWER COMPANY and MPE TOWER, INC. A copy of said Lease Agreement is attached hereto and marked as Exhibit "A", and is incorporated in its entirety by reference.

9. Prior to entering into the Lease, the Plaintiff/Tenant had made it clear to the Defendant/Landlord that Tenant insisted, as a condition precedent to executing a lease, upon obtaining the top television broadcasting antenna space located on the Bithlo Tower for its sole and exclusive use, including the aperture of said slot. It was further clear from the representations made by

the Landlord, that there would only be two slots on the Tower and only two TV stations would be operating from said Tower; to wit, one television antenna in the upper slot of the Tower one below that slot on the Tower.

10. Landlord, in an attempt to obtain an agreement with Tenant, created a situation of real or illusory competition between the Tenant and Channel 52 for the "top slot", and represented that a lease would be signed on a first-come, first-served basis for the top slot, with the other TV station being relegated to the lower of the two slots.

11. The "top slot" is approximately 46 feet in height consisting of a base at 1470 feet above ground, a top at 1516 feet above ground and a radiation center at a height of approximately 1,493 feet above the ground. This 46 foot distance between the top and bottom of the "top slot" and a 360 degree cylinder circling the tower at this level constitutes the top slot's "aperture". Operating from the "top slot" enables the Tenant to transmit its signal to the widest possible audience, including Orlando, Melbourne, and Daytona Beach, have exclusive possession of a highly desirable centrally located transmitter site and satisfy the FCC.

12. In the absence of Tenant receiving the "top slot" and exclusive use of its aperture, Tenant would not have entered into the "Lease" and would have sought space on another tower or would have built its own tower.

13. The aforementioned facts were known to the Defendant/Landlord and was discussed by the parties and became the

subject of communications and agreement between the parties, prior to their entering into the "Lease", and were incorporated into the "Lease".

14. Even though RAINBOW, the Plaintiff/Tenant, was aware that the FCC's grant of the Permit for Channel 65 to RAINBOW was being challenged in the Courts by rejected applicants who sought to obtain the FCC permit for Channel 65, Plaintiff/Tenant nevertheless entered into the "Lease" and continued to make the required lease payments over the course of five years in order to preserve its top antenna slot (including the aperture of that slot) so that it would be available to Tenant at the conclusion of the litigation when Plaintiff was prepared to go forward with the erection of its antenna and the construction of the transmitter building. Defendant accepted said rent knowing that Plaintiff was preserving its exclusive rights to the "top slot" and its aperture.

15. At all times material to this action, the Defendant/Landlord represented to Plaintiff/Tenant that the "Lease" would provide Plaintiff with exclusive use of the top slot and its aperture, and knew that Plaintiff would execute the Lease only with that assurance. After the Lease was executed by the parties, Plaintiff furnished Defendant with an "Engineering Exhibit Application for Modification of Television Construction Permit" filed for RAINBOW by Jules Cohen & Associates dated February 3, 1986, which document was submitted to the FCC and approved by the FCC and specifically referred to the RAINBOW/Channel 65 antenna site as having a radiation center of 1,493 feet above ground level.

This Exhibit reaffirms the agreement between the parties as previously set forth herein.

SPECIFIC PERFORMANCE

16. Plaintiff realleges and reavers paragraphs 1 through 15 as if set forth herein.

17. Defendant/Landlord has advised the Plaintiff/Tenant that it intends to allow a television competitor of Plaintiff to occupy an antenna position within the aperture of Plaintiff/Tenant's slot. On October 31, 1990, Defendant/Landlord gave the Plaintiff/Tenant notice that it would allow Plaintiff to continue to occupy the "top slot" but not on an exclusive basis and that failure to agree would constitute a breach. This action constitutes an anticipatory breach by the Landlord of the "Lease". It means that instead of Plaintiff/Tenant having exclusive use of that top slot on the Tower, multiple antennae will be positioned within a 360 degree cylinder (aperture) of the slot leased to Plaintiff/Tenant.

18. Plaintiff/Tenant has been advised that the Defendant/Landlord intends to allow Press Broadcasting Company ("Press"), to place an antenna on the Tower within the aperture of the top slot previously and currently leased to Plaintiff/Tenant. Press is a direct competitor to the Plaintiff, and currently operates from a different location. From its present location, Press covers a portion of, but not all, of the area to be covered by Plaintiff operating from the Bithlo Tower. If Press is allowed to lease the "top slot" on the Tower, the relocation would enable Press to compete directly with the Plaintiff by now covering the

identical areas of the market which would be covered by Plaintiff.

19. The intended action of the Defendant/Landlord to execute a lease which would permit Press to occupy the same "top slot" within the aperture of that slot together with Plaintiff/Tenant would cause severe and irreparable harm to the Plaintiff for the following reasons: Press operates an established station in the market and by permitting its relocation to the "top slot" on the Bithlo Tower, it would permit Press to shift its coverage of the market into the identical areas as the Plaintiff, in direct competition with the Plaintiff.

20. In 1986 Press offered to buy an option to acquire Plaintiff/Rainbow for a price exceeding \$15 million dollars because of its exclusive occupancy of the top slot on the Bithlo Tower; such offer was unsolicited by Rainbow and rejected by Rainbow.

21. But for Defendant/Landlord's improper action in permitting or intending to permit Press' usage of the top slot on the Bithlo Tower, Plaintiff/Tenant would be the fifth station and the only independent television station transmitting from the center of the market which can presently only accommodate five stations from an economic viability standpoint. Such a position would have assured the viability of Plaintiff's station.

22. There are no remaining vacant allocations of television channels in the Orlando/Melbourne/Daytona Beach area, therefore no additional stations can be licensed. In the absence of a proposed lease on the Bithlo Tower by the Defendant/Landlord to Press, Plaintiff would not have another independent station competing in

its same marketing area. It was because of the allocation and competitive situation that Plaintiff applied for its permit in the first place, leased the top slot and its aperture on the Bithlo Tower, and paid rent for almost five years (said rents paid being approximately \$250,000) while the FCC's decision was being challenged.

23. It is anticipated that the Defendant/Landlord will immediately execute a lease with Press to allow the construction of its antenna within the top slot and its aperture. Thus, the relief sought by the Plaintiff/Tenant is of an emergency nature in order to prevent irreparable harm.

24. Plaintiff/Tenant has complied with all conditions precedent.

25. Plaintiff/Tenant does not have an adequate remedy at law.

WHEREFORE, Plaintiff/Tenant moves this Court to specifically enforce the "Lease" and to preclude the Defendant/Landlord from permitting another TV station from occupying the top slot and its aperture on the Tower, and for such other relief as this Court shall deem just and proper.

#### TEMPORARY AND PERMANENT INJUNCTION

26. Plaintiff/Tenant realleges and reavers each of the preceding paragraphs, and further alleges:

27. Defendant/Landlord, in an attempt to obtain additional revenue from its Tower and in total violation of Plaintiff's rights, has announced to Plaintiff/Tenant that it intends to place a competitor TV station in a position on its Tower to which

Plaintiff/Tenant claims exclusive use and occupancy. Defendant/Landlord intends to enter into a lease with a competitor of the Plaintiff for the antenna space reserved exclusively for the Plaintiff, and to allow such prospective tenant to immediately erect an antenna and to commence construction of a transmission building. The prospective tenant is Press, an existing independent TV station in the Orlando area which seeks to expand or shift its marketing area so as to compete directly with the marketing area to be covered by the Plaintiff, since both the Plaintiff and Press would be on the same height on the tower and thus would have the identical transmission capabilities. If Press is allowed to transmit from this site, it will render Plaintiff's permit valueless. See Affidavit from Susan Harrison attached hereto and made a part hereof as Exhibit "B". If Press is not allowed on the top slot, it can still transmit from its present location and will suffer no harm.

28. Plaintiff has paid rent for almost five years in order to preserve the exclusive use of the "top slot" on the Tower and assure its viability, even though it was not actually transmitting from said Tower.

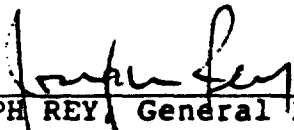
29. Plaintiff is now prepared to build and place its antenna on its "top slot" on the Tower and to commence construction of the transmitter building on Defendant's premises in accordance with its Lease. However, Plaintiff's permit for Channel 65 to transmit from the Tower is not a viable business opportunity for Plaintiff if, in fact, Defendant/Landlord is permitted to place additional TV

antennas within the "top slot" preserved by and leased to the Plaintiff.

30. Defendant/Landlord's damages, in the event that a temporary and permanent injunction is wrongfully issued, is solely its loss of potential additional lease payments. On the other hand, the injury to the Plaintiff/Tenant should Press occupy the same "top slot" and its aperture on the Tower, is irreparable since it would no longer make any business sense for Plaintiff/Tenant to proceed to go on the air. In effect, five years of litigation expenses and lease payments on the part of the Plaintiff/Tenant to protect its permit and its exclusive "top slot" on a centrally located Tower, with no more TV stations being licensed by the FCC in that area, would have been for naught.

WHEREFORE, Plaintiff/Tenant moves this Court for the entry of a temporary injunction preventing Defendant/Landlord from leasing any space on the Tower within the aperture of the top slot to any other TV station, and for the issuance of a permanent injunction containing the same prohibition and compelling Defendant/Landlord to permit Plaintiff/Tenant to immediately start to build on Defendants' Tower.

RAINBOW BROADCASTING COMPANY,  
a Florida Partnership

By:   
JOSEPH REY, General Partner

STATE OF FLORIDA     )  
                              ) ss.  
COUNTY OF DADE     )

BEFORE ME, the undersigned authority, this day personally appeared JOSEPH REY, as General Partner of RAINBOW BROADCASTING

COMPANY, a Florida Partnership, who being first duly sworn, acknowledged before me that he has reviewed the foregoing and the statements contained therein are true and correct.

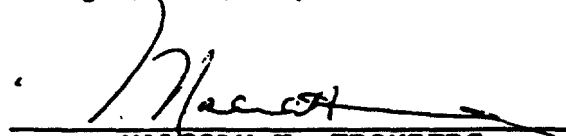
WITNESS my hand and seal this 2<sup>nd</sup> day of November ~~October~~, 1990, in the County and State aforesaid.

  
NOTARY PUBLIC, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. FEB. 4, 1993  
BONDED THRU GENERAL INS. UND.

FROMBERG, FROMBERG AND LEWIS, P.A.  
Attorneys for Plaintiffs  
420 South Dixie Highway, 3rd Floor  
Coral Gables, Florida 33146  
Telephone: (305) 666-6622

  
MALCOLM H. FROMBERG

LEASE AGREEMENT

This Lease Agreement is made and entered into this \_\_\_\_ day of December, 1985 by and among BITHLO TOWER COMPANY, a Florida general partnership with principal offices in Portland, Maine, ("Landlord"), and RAINBOW BROADCASTING, CHANNEL 65, a Florida partnership, with principal offices at Orlando, Florida, ("Tenant").

THE PARTIES HERETO EXPRESSLY AGREE THAT THE TERMS AND CONDITIONS OF THIS LEASE SHALL BE BINDING ONLY AS THEY RELATE TO THE TOP TELEVISION BROADCASTING ANTENNA SPACE LOCATED ON THE BITHLO TOWER. IF THE TOP TELEVISION BROADCASTING ANTENNA SPACE ON THE BITHLO TOWER IS OTHERWISE OCCUPIED THIS LEASE SHALL BE NULL AND VOID.

WITNESSETH

WHEREAS, Landlord is the owner of certain real property ("Premises") located at Bithlo, Florida; and

WHEREAS, Landlord has erected on the Premises a communications transmission tower ("Tower") substantially as described in Exhibit A hereto, and further, Landlord proposes to build on behalf of Tenant, at Tenants' cost, an addition to the existing transmitter building (the transmitter building as so enlarged being the "Transmitter Building") for Tenant's transmitting equipment, substantially as described in Exhibit B hereto; and

WHEREAS, Tenant is the permittee of Television Station Channel 65, Orlando, Florida (the "Station") and desires to place and operate the antenna for the Station at a location on the Tower, said location being described in Exhibit C hereto (the "Antenna Space"), to install and maintain, at Tenant's expense, certain transmission lines from the Station's transmitter equipment in the Transmitter Building across or under portions of the Premises and through or upon the Tower to the Antenna Space and to occupy an area within the Transmitter Building (the "Tenant's Space") in which to locate the Station's transmitter and related equipment; and

WHEREAS, Tenant has been granted a construction permit issued by the Federal Communications Commission ("FCC") and has filed a site change application to relocate its antenna to the Tower and to install its transmitter in the Transmitter Building; and

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LEASE AGREEMENT

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This Lease Agreement is made and entered into this 6th day of January 1986 by and among BITHLO TOWER COMPANY, a Florida general partnership with principal offices in Portland, Maine, ("Landlord"), and RAINBOW BROADCASTING, CHANNEL 65, a Florida partnership, with principal offices at Orlando, Florida, ("Tenant").

THE PARTIES HERETO EXPRESSLY AGREE THAT THE TERMS AND CONDITIONS OF THIS LEASE SHALL BE BINDING ONLY AS THEY RELATE TO THE TOP TELEVISION BROADCASTING ANTENNA SPACE LOCATED ON THE BITHLO TOWER. IF THE TOP TELEVISION BROADCASTING ANTENNA SPACE ON THE BITHLO TOWER IS OTHERWISE OCCUPIED THIS LEASE SHALL BE NULL AND VOID.

WITNESSETH

WHEREAS, Landlord is the owner of certain real property ("Premises") located at Bithlo, Florida; and

WHEREAS, Landlord has erected on the Premises a communications transmission tower ("Tower") substantially as described in Exhibit A hereto, and further, Landlord proposes to build on behalf of Tenant, at Tenants' cost, an addition to the existing transmitter building (the transmitter building as so enlarged being the "Transmitter Building") for Tenant's transmitting equipment, substantially as described in Exhibit B hereto; and

WHEREAS, Tenant is the permittee of Television Station Channel 65, Orlando, Florida (the "Station") and desires to place and operate the antenna for the Station at a location on the Tower, said location being described in Exhibit C hereto (the "Antenna Space"), to install and maintain, at Tenant's expense, certain transmission lines from the Station's transmitter equipment in the Transmitter Building across or under portions of the Premises and through or upon the Tower to the Antenna Space and to occupy an area within the Transmitter Building (the "Tenant's Space") in which to locate the Station's transmitter and related equipment; and

WHEREAS, Tenant has been granted a construction permit issued by the Federal Communications Commission ("FCC") and has filed a site change application to relocate its antenna to the Tower and to install its transmitter in the Transmitter Building; and

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**EXHIBIT "A"**

WHEREAS, Landlord desires to grant to Tenant the use of the Antenna Space and the Tenant's Space and to grant Tenant the right to install and maintain a transmission line from the Tenant's Space for connection with Tenant's antenna on the Tower;

NOW, THEREFORE, in consideration of Tenant's obligation to pay Rent and in consideration of the mutual rights, obligations, terms, covenants, and provisions hereof, the parties mutually agree as follows:

## ARTICLE I

### LEASED PREMISES

Landlord, for and in consideration of the covenants and conditions herein mentioned, reserved and contained, to be kept and performed by Tenant, and the rents to be paid by Tenant hereunder, does hereby grant to Tenant, for the rental periods described herein, and Tenant does hereby take from Landlord for said periods, upon and subject to the covenants and conditions herein contained, the following:

(a) Antenna Space. The Antenna Space for the installation and operation of Tenant's antenna, all as more particularly described in Exhibit C hereto; and

(b) Tenant's Space. Occupancy of specified area on real estate within the Transmitter Building for installation and operation of Tenant's transmitter and related equipment more particularly described in Exhibit "B" hereto; and

(c) Access. The right, in common with others, to use the roadways constructed by Landlord on the Premises for ingress and egress to and from the Transmitter Building and Tower as reasonably necessary for purposes of Tenant's installation, removal, servicing, maintenance and repair of Tenant's equipment therein; and

(d) Transmission Lines. The limited and nonexclusive right to install and maintain a transmission line from the Tenant's Space to the Antenna Space, and to install associated auxiliary equipment on the Tower, all for the sole purpose of enabling Tenant's receipt of program material from its studio and the transmission of the broadcast signal of the Station from the Antenna Space; and

(e) Generator Space. Occupancy of an additional area if space outside the Transmitter Building for placement and use of Tenant's generator or other equipment.

(f) Utility Lines. The right, in common with others, to connect to power, telephone and utility lines to the Transmitter Building.

All of the space, premises and rights granted herein on a limited and non-exclusive basis are hereinafter sometimes referred to as the "Leased Premises". Tenant's use of the Leased Premises shall be limited to such activities as are directly related to the broadcast operation of the Station.

## ARTICLE II

### TERM

(a) TO HAVE AND TO HOLD the Leased Premises for an Initial Term of fifteen (15) years, commencing at 12:01 A.M. on the Commencement Date as defined in Article II(b) and expiring at 12:01 A.M. on the date fifteen (15) years following the first day of the calendar month next following the Commencement Date, unless this Lease is sooner terminated as hereinafter provided. Tenant is granted a first option to renew and extend this Lease for a First Renewal Term of five (5) years, commencing at 12:01 A.M. on the day following the date of expiration of the Initial Term. Such option shall be deemed exercised by Tenant unless Tenant shall give Landlord written notice of Tenant's intention not to renew at least ninety days prior to expiration of the Initial Term. Tenant is granted a second option to renew and extend this Lease for a Second Renewal Term of five (5) years, commencing at 12:01 A.M. on the day following the date of expiration of the First Renewal Term. Such option shall be deemed exercised by Tenant unless Tenant shall give Landlord written notice ninety days prior to expiration of the First Renewal Term. The Initial and any Renewal Term shall be subject to all of the terms and conditions set forth in this Lease.

(b) Commencement Date. The Lease Commencement Date shall be the earliest to occur of (i) the date Tenant begins to transmit the signal of the Station from the Leased Premises, or October 1, 1986. Landlord may postpone the Commencement Date for such reasonable period of time as may be necessary to permit the Landlord to complete the addition to the Transmitter Building in accordance with Article IV(c) hereof.

Upon written request of either party, Landlord and Tenant shall execute a memorandum setting forth such commencement date.

(c) Holding Over. If Tenant or anyone claiming under Tenant shall remain in possession of the Leased Premises or any part thereof after the expiration of the term of this Lease or any renewal thereof without any agreement in writing between the Landlord and Tenant with respect thereto, prior to acceptance of

rent by Landlord, the person remaining in possession shall be deemed a tenant at sufferance, and, after acceptance of rent by Landlord, the party remaining in possession shall be deemed a tenant from month to month, subject to the provisions of this Lease insofar as the same may be made applicable to a tenancy from month to month. The rental during any such period shall equal one hundred ten percent (110%) of the rental in effect immediately preceding such expiration.

### ARTICLE III

#### RENT

(a) Rent. Tenant covenants and agrees to pay Landlord for the Leased Premises during the Initial Term of said Lease and any Renewal Terms hereunder the amounts set forth at Exhibit D attached hereto and incorporated herein.

(b) Cost of Transmitter Building. Landlord has constructed the Transmitter Building for the use and occupancy of all tenants sharing rental placements on the Tower, to which, in accordance with Article IV(c) hereof, Landlord will be constructing an addition in which Tenant will occupy an exclusive area to house its transmitting equipment. Landlord shall bill Tenants monthly for the actual cost of said transmitter building and provide Tenant with photocopies of all invoices from all contractors to evidence the actual cost of construction. Tenant shall pay Landlord's invoice within twenty (20) days from receipt of same. If Tenant fails to timely pay Landlord's invoices, then Landlord shall have the right to draw upon the Twenty-Five Thousand (\$25,000.00) Dollars referred to in Article IV(c). Upon the issuance of a certificate of occupancy by the appropriate governmental authority, Landlord shall return to Tenant the Twenty-Five Thousand (\$25,000.00) Dollars deposit together with accrued interest thereon less any amounts withdrawn by reason of Tenant's failure to timely pay Landlord's invoices in accordance with Exhibit "D" subparagraph (b) hereof.

(c) Transmitter Building Ownership and Insurance Cost. Tenant's interest in the Transmitter Building at any given time shall be that fraction determined by dividing the total number of square feet in Tenant's Space by the total number of square feet in the Transmitter Building. Tenant's interest in the Transmitter Building may be transferred only to Tenant's successors and assigns under this Lease. Upon the expiration or earlier termination of this Lease, Tenant's interest in the Transmitter Building shall become the property of Landlord. Landlord shall have the right to admit additional tenants to ownership in the Transmitter Building. Any funds received by Landlord with respect to such new owner's interest in the Transmitter Building shall belong to Landlord.

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Notwithstanding any other provision of this Lease concerning Landlord's Obligations, the periodic expense of insuring the Transmitter Building shall be allocated among the persons owning the same (including Landlord and Tenant) in proportion to the square footage of the respective areas then occupied by such tenants.

#### ARTICLE IV

##### CONSTRUCTION, INSTALLATION AND USE OF LEASED PREMISES

(a) Tenant's FCC Applications. Tenant has, or within sixty (60) days of the date of execution of this Lease Agreement Tenant shall have, submitted applications to the FCC for all approvals and permits required to move or establish the Station's antenna and broadcast equipment on the Tower and in the Transmitter Building. Tenant shall use its best, reasonable efforts to obtain such approvals and permits not later than April 1, 1986.

At the execution hereof, or not later than five (5) days after filing thereof, Tenant shall give Landlord a copy of each such application, and thereafter shall give Landlord written notice of any amendment, modification, grant or denial of any such application not later than ten days after the filing or entry of same. Landlord may terminate this Agreement of Lease under this Article if (i) Tenant fails to file such FCC applications within the time set forth herein; or (ii) Tenant fails to use its best efforts to obtain such approval and permits as required herein; or (iii) such applications have not been granted by the FCC within a period of one year after Tenant's filing of its application to the FCC hereunder, or any extension of such date consented to by Landlord in writing. Landlord shall exercise its right of termination under this subparagraph, if at all, by Landlord's written notice of intention to terminate stating the basis for such termination, given to Tenant not later than twenty (20) days prior to the proposed termination date. If Tenant shall not correct the deficiency set forth in the foregoing notice prior to the proposed termination date, Landlord may terminate this Lease effective as of such date without further notice. Upon such termination, the Deposit established under Exhibit D shall be retained by Landlord and the parties shall be relieved of any further obligations hereunder.

(b) Landlord's Regulatory Applications. Landlord has obtained from the Federal Communication Commission (FCC), the Federal Aviation Administration (FAA) and all other appropriate governmental authorities all approvals and permits necessary for the construction of the Tower and the Transmitter Building in accordance with the description thereof set forth on Exhibits A, B and C hereof.

(c) Landlord's Construction. Landlord has retained the services of suitably qualified engineering professionals to design the Tower and related facilities as structurally sound units and to inspect the same during construction. Landlord does not undertake any responsibility for the suitability of the Tower and such facilities for Tenant's broadcast operations. NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, IS MADE BY LANDLORD WITH RESPECT TO THE SUITABILITY OF THE TOWER, THE TRANSMITTER BUILDING AND RELATED FACILITIES FOR TENANT'S INTENDED USE THEREOF.

Landlord will construct for Tenant an addition to the transmitter building generally in accordance with Exhibit "B" hereto. Upon execution of this Lease, Tenant shall provide Landlord with a Twenty-Five Thousand (\$25,000.00) Dollars deposit to be held by Landlord in a separate interest money market rate bearing account with interest accruing to Tenant. And shall bill Tenant monthly the actual cost of construction as provided in Article III(c) herein. Landlord may retain such part of said deposit to defray any actual cost of work on such addition not previously paid for by Tenant notwithstanding any termination pursuant to Article IV(a) hereof.

Tenant will provide Landlord with name and references of a preferred contractor to perform the construction work. Landlord's approval shall not be unreasonably withheld. If Tenant's preferred contractor is not acceptable to Landlord, then Landlord shall indicate why it objects to Tenant's chosen contractor and Tenant shall submit the name of a second contractor. This process shall continue until a preferred contractor is selected. After receipt of such deposit, and an agreement is reached designating the preferred contractor, Landlord agrees to commence construction with reasonable promptness and to prosecute such construction to completion with reasonable diligence.

(d) Installation of Tenant's Equipment. Tenant, at Tenant's expense, shall install Tenant's equipment in the Antenna Space, including the necessary antennas, transmission lines and microwave equipment transmission lines from the Tenant's Space to the Antenna Space, all according to the description of such installations contained in Exhibits A, B and C hereof. In addition to the requirements of Article IV(g), all work on the Tower by or on behalf of Tenant shall be performed in accordance with plans and specifications and by contractors and riggers all satisfactory to Landlord in its reasonable discretion, and shall be subject to Landlord's reasonable requirements as to the circumstances, timing and sequence of such work. Prior to the commencement of any such work, Tenant shall cause such contractors or riggers to obtain insurance otherwise meeting the requirements of Article VI(c) but affording minimum protection of not less than One Million Dollars (\$1,000,000) in respect to personal injury or death to any one person, of not less than Five Million Dollars (\$5,000,000) in respect to personal injury or death to any two or more persons, and of not less than Five Million

Dollars (\$5,000,000) for property damage. Certificates of such insurance conforming to the requirements of said Article VI(c) shall be provided to Landlord prior to the commencement of any such work. The installation of Tenant's equipment in Tenant's Space shall be the responsibility of and at the expense of Tenant under the supervision and direction of Landlord. All installation shall be consistent with good engineering practices in compliance with all federal, state and other governmental requirements, and with the use of the Premises by Landlord and other tenants. Upon completion of such installations, Tenant shall provide Landlord with a written certificate of Tenant's engineer certifying compliance with the foregoing requirements. All installation costs incurred by Landlord hereunder shall be chargeable to Tenant, at reasonably competitive rates in the area, including any additional costs resulting from interruption of transmissions by other tenants.

(e) Acceptance of Possession. Not later than thirty (30) days after Tenant first commences broadcasting from its antenna on the Tower, as reasonably determined by Landlord's engineers, Tenant shall give Landlord written notice of any asserted defects in the Tower, the Antenna Space, or the Tenant's Space, or any variation thereof from the description set forth in Exhibits A, B and C hereof. Any such defect or variation, except such latent defects as shall not have been reasonably discoverable by Tenant within said notice period, which is not set forth in a notice timely given, shall be deemed waived and accepted by Tenant. If Tenant shall not notify Landlord of any asserted defects during such thirty (30) day period, said facilities shall be deemed accepted by Tenant subject to such defects and variations. Landlord shall have a period of thirty (30) days, or if the nature of the defect or variance is such as will reasonably require a greater period of time, then Landlord shall have a reasonable time after its receipt of such notice within which to correct any defect or variation so long as Landlord proceeds diligently to cure the defect. If any defect or variation not corrected as provided above materially impairs Tenant's broadcasting activities, and if Landlord does not give Tenant Landlord's written undertaking to correct same, Tenant may terminate this Lease upon thirty (30) days' prior written notice. If the defect is to the Transmitter Building, then Tenant shall have right to correct same and deduct the total cost of the correction from future rents. In no event shall Tenant have right or authority to correct any defect or variation on the Broadcasting Tower.

(f) Telephone Equipment. Tenant shall have the right to have its telephone lines for program service and transmission control installed in the Transmitter Building, and extended to Tenant's transmitter equipment together with such terminal equipment as Tenant may reasonably require for said telephone lines, all at no expense to Landlord.

(g) Prior Approval of Landlord. All construction and/or installation done by or on behalf of Tenant and all maintenance, repair, removal or relocation, except routine maintenance, of any of Tenant's equipment on the Leased Premises shall require the prior written approval of Landlord, which approval shall not be withheld unreasonably. Request for such approval shall be in writing and shall be furnished to Landlord at least ten (10) days prior to the proposed work, provided that repairs of an emergency nature may be requested and approved orally upon immediate notice. Such requests shall state with reasonable precision the type of equipment to be worked on, the manner and time of the work to be performed and the precautions to be taken to avoid interference with equipment or broadcasting of others. Landlord agrees to respond to any such requests with reasonable promptness. Any such work must also be consistent with the obligations of Tenant hereunder.

(h) Access. Subject to Subparagraph (g) above, Tenant shall have a right of access to the Tower at all reasonable times for inspection, repair, maintenance and replacement of its equipment, provided, however, that (except as may be provided elsewhere in this Lease) such access and activities shall not unreasonably interfere with the use of the Tower by Landlord or any tenant or user, or interrupt or otherwise adversely affect the continued broadcast operation of Landlord or any other tenant or user. Landlord shall have a right of access, at all reasonable times, for examination, inspection, emergency repair or replacement of any Tenant's equipment located in the Transmitter Building, provided, however, that (except as may be provided elsewhere in this Lease) such access and activity by Landlord shall not interfere with the use of the tower by any tenant or user, or interrupt or otherwise adversely affect the continued broadcast operation of any other tenant or user. At the outset of the initial term of the Lease, Tenant shall provide to Landlord duplicates of any keys necessary to permit access to Tenant's equipment at said location.

(i) Condition of Tenant's Equipment. The equipment installed by Tenant hereunder shall be and remain the property of Tenant, subject to the rights of Landlord described in Article IX hereof. Tenant shall be fully responsible for the maintenance, modification, removal, and, subject to Landlord's prior approval, any replacement or rearrangement, of Tenant's equipment installed in or upon the Leased Premises, and Landlord shall have no responsibility therefor. Tenant shall keep all of its equipment in safe condition at all times and in compliance with all applicable statutes, rules, regulations, orders, directives of any governmental body and other standards pertaining thereto and pertaining to the Leased Premises. The manner of use and the equipment and devices to be used for any installation, relocation and removal of Tenant's equipment, must be accomplished consistently with good engineering practices and with the quiet and unin-